

Hon. Ricardo S. Martinez

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

BERNARD WAITHAKA, on behalf of
himself and all others similarly situated,

Plaintiff,

v.

AMAZON.COM, INC., AMAZON
LOGISTICS, INC.,

Defendants.

Case No. 2:19-cv-01320-RSM

STIPULATED PROTECTIVE ORDER

1. PURPOSES AND LIMITATIONS

Discovery in this action is likely to involve production of confidential, proprietary, or private information for which special protection may be warranted. Accordingly, the parties hereby stipulate to and petition the court to enter the following Stipulated Protective Order. The parties acknowledge that this agreement is consistent with LCR 26(c). It does not confer blanket protection on all disclosures or responses to discovery, the protection it affords from public disclosure and use extends only to the limited information or items that are entitled to confidential treatment under the applicable legal principles, and it does not presumptively entitle parties to file confidential information under seal.

2. “CONFIDENTIAL” AND “ATTORNEYS’ EYES ONLY” MATERIAL

“Confidential” material shall include information or documents that a party or third-party in good faith reasonably believes contains sensitive, non-public, private or confidential personal information the public disclosure of which would cause actual harm to a person’s reasonable expectation of privacy or is otherwise entitled to protection under the applicable Court rules.

“Attorneys’ Eyes Only” material shall include information or documents that a party or third-party in good faith reasonable believe contains, constitutes, or includes highly confidential information or material that is believed in good faith to be not only confidential, but also constitute trade secrets or commercial business information that could be used to the detriment of the producing party’s business, including without limitation information reflecting pricing, profits, product development, customer feedback, competitive analysis, roadmap, strategies, marketing plans, operational plans, customers, and/or unreleased initiatives, products, services, features, and/or business deals.

3. SCOPE

The protections conferred by this agreement cover not only Confidential and Attorneys’ Eyes Only material (as defined above), but also (1) any information copied or extracted from Confidential or Attorneys’ Eyes Only material; (2) all copies, excerpts, summaries, or compilations of Confidential or Attorneys’ Eyes Only material; and (3) any testimony, conversations, or presentations by parties or their counsel that might reveal Confidential or Attorneys’ Eyes Only material.

However, the protections conferred by this agreement do not cover information that is in the public domain or becomes part of the public domain through trial or otherwise.

4. ACCESS TO AND USE OF CONFIDENTIAL OR ATTORNEYS’ EYES ONLY MATERIAL

4.1 Basic Principles. A receiving party may use Confidential or Attorneys’ Eyes Only material that is disclosed or produced by another party or by a non-party in connection with this

1 case only for prosecuting, defending, or attempting to settle this litigation. Confidential or
2 Attorneys' Eyes Only material may be disclosed only to the categories of persons and under the
3 conditions described in this agreement. Confidential material must be stored and maintained by a
4 receiving party at a location and in a secure manner that ensures that access is limited to the persons
5 authorized under this agreement.

6 4.2 Disclosure of "CONFIDENTIAL" Information or Items. Unless otherwise ordered
7 by the court or permitted in writing by the designating party, a receiving party may disclose any
8 Confidential material only to:

9 (a) the receiving party's counsel of record in this action, as well as employees
10 of counsel to whom it is reasonably necessary to disclose the information for this litigation, any
11 mediator selected to mediate this matter, and any arbitrator selected to hear this matter;

12 (b) the officers, directors, and employees (including in-house counsel) of the
13 receiving party to whom disclosure is reasonably necessary for this litigation;

14 (c) experts and consultants to whom disclosure is reasonably necessary for this
15 litigation and who have signed the "Acknowledgment and Agreement to Be Bound" (Exhibit A);

16 (d) the court, court personnel, and court reporters and videographers and their
17 staff;

18 (e) copy or imaging services retained by counsel to assist in the duplication of
19 Confidential material, provided that counsel for the party retaining the copy or imaging service
20 instructs the service not to disclose any Confidential material to third parties and to immediately
21 return all originals and copies of any Confidential material;

22 (f) during their depositions, witnesses in the action to whom disclosure is
23 reasonably necessary and who have signed the "Acknowledgment and Agreement to Be Bound"
24 (Exhibit A), unless otherwise agreed by the designating party or ordered by the court. Pages of
25 transcribed deposition testimony or exhibits to depositions that reveal Confidential material must
26

1 be separately bound by the court reporter and may not be disclosed to anyone except as permitted
2 under this agreement; or

3 (g) the author or recipient of a document containing the information or a
4 custodian or other person who otherwise possessed or knew the information.

5 4.3 Disclosure of Attorneys' Eyes Only Information or Items. Unless otherwise
6 ordered by the court or permitted in writing by the designating party, a receiving party may disclose
7 any Attorneys' Eyes Only material only to:

8 (a) Counsel for the parties in this litigation, including in-house counsel, and
9 employees or contract personnel retained by such attorneys' offices (such as secretaries, legal
10 assistants, and document copying, coding, or imaging services) to whom it is necessary to disclose
11 such information or material in furtherance of the prosecution or defense of this action, any
12 mediator selected to mediate this matter, and any arbitrator selected to hear this matter;

13 (b) The Court and its personnel, as necessary in support of motions, pleadings,
14 and other court papers and proceedings;

15 (c) Court reporters and videographers and their assistants, to the extent
16 reasonably necessary for reporting of depositions and hearings; or

17 (d) Experts and consultants retained by an attorney, to whom disclosure is
18 reasonably necessary for this litigation and who have signed the "Acknowledgment and
19 Agreement to Be Bound" (Exhibit A).

20 4.4 Filing Confidential or Attorneys' Eyes Only Material. Before filing Confidential or
21 Attorneys' Eyes Only material or discussing or referencing such material in court filings, the filing
22 party shall confer with the designating party, in accordance with Local Civil Rule 5(g)(3)(A), to
23 determine whether the designating party will remove the confidential or attorneys' eyes only
24 designation, whether the document can be redacted, or whether a motion to seal or stipulation and
25 proposed order is warranted. During the meet and confer process, the designating party must
26 identify the basis for sealing the specific Confidential or Attorneys' Eyes Only material at issue,

1 and the filing party shall include this basis in its motion to seal, along with any objection to sealing
2 the information at issue. Local Civil Rule 5(g) sets forth the procedures that must be followed and
3 the standards that will be applied when a party seeks permission from the court to file material
4 under seal. A party who seeks to maintain the confidentiality of its information must satisfy the
5 requirements of Local Civil Rule 5(g)(3)(B), even if it is not the party filing the motion to seal.
6 Failure to satisfy this requirement will result in the motion to seal being denied, in accordance with
7 the strong presumption of public access to the Court's files.

8 5. DESIGNATING PROTECTED MATERIAL

9 5.1 Exercise of Restraint and Care in Designating Material for Protection. Each party
10 or non-party that designates information or items for protection under this agreement must take
11 care to limit any such designation to specific material that qualifies under the appropriate
12 standards. When reasonably practicable and not unduly burdensome in light of the nature and
13 content of particular materials, documents, items, or oral or written communications containing
14 Confidential or Attorneys' Eyes Only material, the designating party must designate for protection
15 only those parts of the material, documents, items, or oral or written communications that qualify,
16 so that other portions of the material, documents, items, or communications for which protection
17 is not warranted are not swept unjustifiably within the ambit of this agreement.

18 Mass, indiscriminate, or routinized designations are prohibited. Designations that are
19 shown to be clearly unjustified or that have been made for an improper purpose (*e.g.*, to
20 unnecessarily encumber or delay the case development process or to impose unnecessary expenses
21 and burdens on other parties) expose the designating party to sanctions.

22 If it comes to a designating party's attention that information or items that it designated for
23 protection do not qualify for protection, the designating party must promptly notify all other parties
24 that it is withdrawing the mistaken designation.

25 5.2 Manner and Timing of Designations. Except as otherwise provided in this
26 agreement, or as otherwise stipulated or ordered, disclosure or discovery material that qualifies for

1 protection under this agreement must be clearly so designated before or when the material is
2 disclosed or produced.

3 (a) Information in documentary form: (e.g., paper or electronic documents and
4 deposition exhibits, but excluding transcripts of depositions or other pretrial or trial proceedings),
5 the designating party must affix the word “CONFIDENTIAL” or “ATTORNEYS’ EYES ONLY”
6 to each page that contains Confidential or Attorneys’ Eyes Only material. Subject to the limitations
7 in Section 5.1, if only a portion or portions of the material on a page qualifies for protection, the
8 designating party also must clearly identify the protected portion(s) (e.g., by making appropriate
9 markings in the margins). Native format document production will be designated by adding the
10 work “CONFIDENTIAL” or “ATTORNEYS’ EYES ONLY” to the file name of the native format
11 document produced, or by affixing such word to the label of the media on which the native format
12 documents are produced as per Section 5.2(c) below. If a receiving party generates any “hard
13 copy,” transcription, or printout from any such designated non-paper media, such party must treat
14 each copy, transcription, or printout as Confidential or Attorneys’ Eyes Only material, as
15 appropriate, and label it in a manner effective to ensure proper treatment.

16 (b) Testimony given in deposition or in other pretrial proceedings: The parties
17 and any participating non-parties must identify on the record, during the deposition or other pretrial
18 proceeding, all protected testimony, without prejudice to their right to so designate other testimony
19 after reviewing the transcript. Any party or non-party may, within fifteen days after receiving the
20 transcript of the deposition or other pretrial proceeding, designate portions of the transcript, or
21 exhibits thereto, as Confidential or Attorneys’ Eyes Only material. Any portions of the transcript
22 not designated for protection on the record must be treated as Confidential material during the
23 fifteen days after receipt of the transcript. If a party or non-party desires to protect confidential
24 information at trial, the issue should be addressed during the pre-trial conference.

25 (c) Other tangible items: The producing party must affix in a prominent place
26 on the exterior of the container or containers in which the information or item is stored the word

1 “CONFIDENTIAL” or “ATTORNEYS’ EYES ONLY.” If only a portion or portions of the
2 information or item warrant protection, the producing party, to the extent practicable, shall identify
3 the protected portion(s).

4 (d) Other information: Information not reduced to documentary or tangible
5 form or that cannot be conveniently designated as set forth above may be designated as
6 Confidential or Attorneys’ Eyes Only material by informing the non-designating party in writing.

7 5.3 Inadvertent Failures to Designate. If timely corrected, an inadvertent failure to
8 designate qualified information or items does not, standing alone, waive the designating party’s
9 right to secure protection under this agreement for such material. Upon timely correction of a
10 designation, the receiving party must make reasonable efforts to ensure that the material is treated
11 in accordance with the provisions of this agreement.

12 5.4 Designating Information Disclosed by Another Party. If a party believes that
13 documents obtained from a third party should be designated as Confidential or Attorneys’ Eyes
14 Only material, the parties will promptly meet and confer and, if they do not come to an agreement
15 as to the treatment of such material, will present the dispute to the Court for resolution.

16 6. CHALLENGING CONFIDENTIALITY DESIGNATIONS

17 6.1 Timing of Challenges. Any party or non-party may challenge a designation of
18 confidentiality at any time. Unless a prompt challenge to a designating party’s Confidential or
19 Attorneys’ Eyes Only designation is necessary to avoid foreseeable, substantial unfairness,
20 unnecessary economic burdens, or a significant disruption or delay of the litigation, a party does
21 not waive its right to challenge a designation by electing not to mount a challenge promptly after
22 the original designation is disclosed.

23 6.2 Meet and Confer. The parties must make every attempt to resolve any dispute
24 regarding Confidential or Attorneys’ Eyes Only designations without court involvement. Any
25 motion regarding such designations or for a protective order must include a certification, in the
26 motion or in a declaration or affidavit, that the movant has engaged in a good faith meet and confer

conference with other affected parties in an effort to resolve the dispute without court action. The certification must list the date, manner, and participants to the conference. A good faith effort to confer requires a face-to-face meeting or a telephone conference.

6.3 Judicial Intervention. If the parties cannot resolve a challenge without court intervention, the designating party may file and serve a motion to retain Confidential or Attorneys' Eyes Only status under Local Civil Rule 7 (and in compliance with Local Civil Rule 5(g), if applicable). The burden of persuasion in any such motion shall be on the designating party. Frivolous challenges, and those made for an improper purpose (*e.g.*, to harass or impose unnecessary expenses and burdens on other parties) may expose the challenging party to sanctions. All parties shall continue to maintain the material in question as Confidential or Attorneys' Eyes Only material until the court rules on the challenge.

7. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED IN OTHER LITIGATION

If a party is served with a subpoena or a court order issued in other litigation that compels disclosure of any information or items designated in this action as "CONFIDENTIAL" or "ATTORNEYS' EYES ONLY" that party must:

(a) promptly notify the designating party in writing and include a copy of the subpoena or court order;

(b) promptly notify in writing the party who caused the subpoena or order to issue in the other litigation that some or all of the material covered by the subpoena or order is subject to this agreement. Such notification shall include a copy of this agreement; and

(c) cooperate with respect to all reasonable procedures sought to be pursued by the designating party whose confidential material may be affected.

8. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL

If a receiving party learns that, by inadvertence or otherwise, it has disclosed Confidential or Attorneys' Eyes Only material to any person or in any circumstance not authorized under this

1 agreement, the receiving party must immediately (a) notify in writing the designating party of the
2 unauthorized disclosures, (b) use its best efforts to retrieve all unauthorized copies of the protected
3 material, (c) inform the person or persons to whom unauthorized disclosures were made of all the
4 terms of this agreement, and (d) request that such person or persons execute the “Acknowledgment
5 and Agreement to Be Bound” (Exhibit A).

6 9. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE PROTECTED
7 MATERIAL

8 When a producing party gives notice to receiving parties that certain inadvertently
9 produced material is subject to a claim of privilege or other protection, the obligations of the
10 receiving parties are those set forth in Fed. R. Civ. P. 26(b)(5)(B). This provision is not intended
11 to modify whatever procedure may be established in an e-discovery order or agreement that
12 provides for production without prior privilege review. The parties agree to the entry of a non-
13 waiver order under Fed. R. Evid. 502(d) as set forth herein.

14 10. NON TERMINATION AND RETURN OF DOCUMENTS

15 Within 60 days after the termination of this action, including all appeals, each receiving
16 party must return all Confidential or Attorneys’ Eyes Only material to the designating party,
17 including all copies, extracts and summaries thereof. Alternatively, the parties may agree upon
18 appropriate methods of destruction.

19 Notwithstanding this provision, counsel are entitled to retain one archival copy of all
20 documents filed with the court, trial, deposition, and hearing transcripts, correspondence,
21 deposition and trial exhibits, expert reports, attorney work product, and consultant and expert work
22 product, even if such materials contain Confidential or Attorneys’ Eyes Only material; *FURTHER*
23 *PROVIDED*, counsel for a party may certify that Confidential material attached to email and stored
24 in counsel’s email systems will continue to be maintained securely and consistent with the
25 provisions of this Order.

1 The confidentiality obligations imposed by this agreement shall remain in effect until a
2 designating party agrees otherwise in writing or a court orders otherwise.

3 IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.

4
5 DATED: July 28, 2021

6
7 s/ Adelaide Pagano

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PURSUANT TO STIPULATION, IT IS SO ORDERED

IT IS FURTHER ORDERED that pursuant to Fed. R. Evid. 502(d), the production or disclosure of any documents or information in this proceeding shall not, for the purposes of this proceeding or any other proceeding in any other court, constitute a waiver of any privilege or protection applicable to such documents or information, including the attorney-client privilege, attorney work-product protection, or any other privilege or protection recognized by law.

DATED this 2nd day of August, 2021.



RICARDO S. MARTINEZ

CHIEF UNITED STATES DISTRICT JUDGE

EXHIBIT A

ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND

I, _____ [print or type full name], of
_____ [print or type full address], declare under penalty of
perjury that I have read in its entirety and understand the Stipulated Protective Order that was
issued by the United States District Court for the Western District of Washington on [date] in the
case of *Bernard Waithaka v. Amazon.com, Inc., et al.*, Case No. 2:19-cv-01320-RSM. I agree to
comply with and to be bound by all the terms of this Stipulated Protective Order and I understand
and acknowledge that failure to so comply could expose me to sanctions and punishment in the
nature of contempt. I solemnly promise that I will not disclose in any manner any information or
item that is subject to this Stipulated Protective Order to any person or entity except in strict
compliance with the provisions of this Order.

I further agree to submit to the jurisdiction of the United States District Court for the
Western District of Washington for the purpose of enforcing the terms of this Stipulated Protective
Order, even if such enforcement proceedings occur after termination of this action.

Date: _____

City and State where sworn and signed: _____

Printed name: _____

Signature: _____